

§ 127.2

22 CFR Ch. I (4–1–02 Edition)

§ 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, *export or temporary import control documents* include the following:

- (1) An application for a permanent export or a temporary import license and supporting documents.
- (2) Shipper's Export Declaration.
- (3) Invoice.
- (4) Declaration of destination.
- (5) Delivery verification.
- (6) Application for temporary export.
- (7) Application for registration.
- (8) Purchase order.
- (9) Foreign import certificate.
- (10) Bill-of-lading.
- (11) Airway bill.
- (12) Nontransfer and use certificate.
- (13) Any other document used in the regulation or control of a defense article, defense service or technical data for which a license or approval is required by this subchapter.

§ 127.3 Penalties for violations.

Any person who willfully:

- (a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by part 124 of this subchapter; or
- (b) In a registration, license application or report required by section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon

conviction, be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

§ 127.4 Authority of U.S. Customs Service officers.

(a) U.S. Customs Service officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) U.S. Customs Service officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.

(c) Upon the presentation to a Customs Officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs Service.

§ 127.5 Authority of the Defense Investigative Service.

In the case of exports involving classified technical data or defense articles, the Defense Investigative Service may take appropriate action to ensure compliance with the Department of Defense Industrial Security Manual. Upon a request to the Defense Investigative Service regarding the export of any classified defense article or technical data, the Defense Investigative Service official or a designated government transmittal authority may require the production of other relevant documents and information relating to the proposed export.

§ 127.6 Seizure and forfeiture in attempts at illegal exports.

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under section 401 of title 22 of the

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United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a temporary export or temporary import license was issued pursuant to this subchapter or to violate the requirements of § 123.2 of this subchapter also constitutes an offense punishable under section 401 of title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in section 401 of title 22 of the United States Code.

§ 127.7 Debarment.

(a) In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Politico-Military Affairs may prohibit any person from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the reasons listed below. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Politico-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years.

(b) Grounds. (1) The basis for a statutory debarment, as described in paragraph (c) of this section, is any conviction for violating the Arms Export Control Act (see § 127.3 of this subchapter) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, described in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Office of Defense Trade Controls to believe that

the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(c) *Statutory Debarment.* Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.27 of this subchapter. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the FEDERAL REGISTER. Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(d) *Appeals.* Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for International Security Affairs for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter are applicable in such appeals.

§ 127.8 Interim suspension.

(a) The Director of the Office of Defense Trade Controls is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6 of this part) exist and where and to the extent the Director finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of